

### **REMARKS**

Claims 23 to 25, 30 and 31 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 23 to 25, 30 and 31 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 23, 30 to 32 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over German Patent No. 196 40 393 A1 to Kraus et al. (hereinafter "Kraus"), in view of Applicant's Admitted Prior Art (Specification Page 1, hereinafter "AAPA"), Patent No. WO/2003/065380 A1 to Georgii (hereinafter "Georgii") and U.S. Patent No. 4,731,219 to Beneck et al. (hereinafter "Beneck"), or in the alternative over Kraus, in view of AAPA, Georgii, U.S. Patent No. 4,889,680 to Wachter (hereinafter "Wachter") and Beneck. Claim 33 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kraus in view of AAPA, Georgii, Wachter and Beneck. Claim 24 was rejected as applied to claim 23 and further in view of JP Patent No. 2000111682A to Shomura et al. (hereinafter "Shomura").

Claims 23 and 34 have been amended solely to address the §112 issue and entry of the amendment after final is respectfully requested.

Reconsideration of the application based on the following remarks is respectfully requested.

#### **35 U.S.C. §112 Rejections**

Claims 23 to 25, 30 and 31 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Office Action asserts on page 2 that "the limitation 'moving each capsule'... 'from the at least one loading location' is new matter because each capsule is only loaded at a single location as described in the specification as filed."

Claim 23 has been amended to address the Examiner's concern, and now tracks some language of claim 33 for example where there was no rejection.

Withdrawal of the rejections to claims 23 to 25, 30 and 31 under 35 U.S.C. §112, first paragraph, is respectfully requested.

Claims 23 to 25, 30 and 31 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action asserts on page 3 that “the metes and bounds of the claimed invention are vague and ill-defined due to inadequate written support as a result of the introduction of new matter as explained above in section 2.” In view of the amendment to claim 23, withdrawal of the rejection is respectfully requested.

Withdrawal of the rejections to claims 23 to 25, 30 and 31, under 35 U.S.C. §112, second paragraph, is respectfully requested.

### 35 U.S.C. §103(a) Rejections

Claims 23, 30 to 32 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable Kraus, in view of AAPA, Georgii and Beneck, or in the alternative over Kraus, in view of AAPA, Georgii, Wachter and Beneck.

Kraus discloses “a sheath 8 ..is located under water in a socket 40.” See Translation, Page 9, lines 12 to 13. Socket bottom 41 has a feedthrough which leads to a hose 46. See Fig. 4. “[T]he water is suctioned out of the two cylinders 43 through the connecting line 46, after which the cylinders 43 are filled with air.” See Page 12, last three lines.

Georgii discloses a concrete body container device.

Wachter discloses a fuel rod assembly 10 that can be stored in a storage pool. Wires 40 remove the fuel rods to store them in a compacted manner in a container 30. See col. 4, lines 16 to 68.

Beneck discloses a method and apparatus for compacting a bundle of fuel elements.

Kraus is a special device used for making sure a single capsule is dry (see Page 3, first full paragraph of translation of Kraus). Individual capsules are placed in the socket 40 temporarily, dried, and sent off to a fuel element or to a reprocessing plant (see page 13 last, two sentences of translation).

The loading structure of the present invention has a plurality of locations, including a loading location (see 27a of Fig. 5, and substitute spec at page 14, lines 13 to 18 for example), and such as a further storage location, where the capsule is moved to after being loaded at the loading location. See substitute specification at page 18, lines 29 to 30, for example.

Kraus clearly does not have such loading structure having a plurality of locations, nor does it desire them, since it uses a single socket 40 for individual processing of capsules. Nor does AAPA show a plurality of locations. Georgii also does not teach or disclose any such loading structure: Georgii at page 7, lines 5 to 9 describes that the inner vessels 11 are in a basin 24, and are only placed later in the asserted containers 10. See Fig. 3.

Wachter and Beneck, teach storage of fuel elements not in capsules, and both are for forming a more compacted unit. These thus would relate to the step of depositing leaky fuel rods in a pool, and to the limitation of claim 30 of an intermediate storage. They relate to storage prior to any encapsulation.

Thus none of the prior art, it is respectfully submitted, teaches or leads one of skill in the art in any way to modify socket 40 of Kraus to have a plurality of locations for individual capsules, together with its socket device. The socket device is not meant to be part of a storage unit.

There thus simply is no teaching in any of the prior art of the claimed language of: moving each capsule containing the leaky fuel rod from the loading location to another location of the plurality of locations of the loading structure different from the loading location. Nor does the Office Action address this actual claim language, and perhaps the amendment for 112 reasons will remove the Examiner's rejection.

*It is noted that page 9 of the Final Office Action seems to state that it would have been obvious in view of Beneck to "teach the lowering of fuel elements into quiver 46 whereupon they are rearranged into a closer configuration." However, this still does not address the claim language. To meet the claim language, the Kraus socket 40 would have to be part of an asserted loading structure of Beneck. There simply is no reason or teaching on any of the prior art to provide the actual Kraus socket into any loading structure, and certainly not one that then would be "transported" as also claimed.*

With respect to claim 32, claim 32 recites "placing each capsule containing the leaky fuel rod in one of the locations of the loading structure; and transporting and storing the leaky fuel rods inside the capsules placed in the loading structure." The above comments with regard to claim 23 are also incorporated here

*With respect to claim 34, the actual claim language is not addressed at Page 11 at the very top. The claim language requires "moving each of the capsules from the loading location to a gas filling location of the plurality of locations, and filling an inside space of the capsule with an inert gas at the gas filling location." Under the Examiner's interpretation of using Kraus to meet this limitation, there is no moving from the loading location to a gas filling location. In Kraus the two locations are one and the same.*

*Allowance of claim 34 is respectfully requested.*

In addition to the above, it is noted that the Final Office Action is in error for at least the following further reasons:

1. On page 4, the assertion that if a prior art structure is capable of performing the intended use, then it meets the claim, is *clearly not applicable to method claims*. A method for beating eggs using a baseball bat could be patentable, and one key point of method claims is that the use of a structure in a new and nonobvious way can be patentable. The Examiner takes this language from case law related to apparatus claims.
2. The combination with Georgii at page 7 is not understood, as the Georgii does not seek to have a loading location such as the Koecher of Kraus placed in its structure. It actually teaches away from such a combination, as it wants to be compact.

Claim 33 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kraus in view of AAPA, Georgii, Wachter and Beneck.

With respect to claim 33, the rejection seems to be predicated on some type of indefiniteness to claim 33 claim language. See "Apart from difficulties..." at bottom of page 16 over to page 17. However, no indefiniteness with respect to claim 33 is mentioned earlier and this seems to maybe have been taken from an earlier rejection? Clarification is requested.

Claim 33 in any event recites:

"moving each capsule containing the leaky fuel rod from the loading location to a different storage location of the plurality of locations; and

transporting and storing the leaky fuel rods inside the capsules while in the storage location.”

None of this claim language is addressed, especially the transporting language. There is simply no teaching of transporting the capsules while in the storage location.

Moreover, on Page 16, the Final Office action seems to be addressing claims 23 and 32, not claim 33. To the extent the claim language is similar, the response above with respect to claims 23 and 32 is incorporated.

Withdrawal of the rejection to claim 33 for these reasons as well is respectfully requested.

Claim 24 was rejected as applied to claim 23 and further in view of Shomura.

Claim 24 recites “wherein the loading structure comprises a handling top nozzle and a bottom nozzle both extending transversely, the nozzles being assembled to each other by longitudinally-extending tie-bars, together with a plurality of transversely-extending spacer plates distributed in the longitudinal direction of the loading structure and each comprising an array of openings, the array of openings including first openings serving to pass and hold a respective capsule, the array of openings also including second openings having engaged therein the tie-bars, the loading structure including a first location for loading capsules in a vicinity of a corner of a square-shaped cross-section of the loading structure.”

The Final Office Action provides absolutely no motivation for combining Shomura and withdrawal for this reason alone is requested.

Withdrawal of the rejection to claim 24 is respectfully requested.

#### Claim 25

*With respect to claim 25, claim 25 is not addressed in any prior art rejection and allowance of claim 25 is respectfully requested.*

**CONCLUSION**

It is respectfully submitted that the application is in condition for allowance and applicants respectfully request such action.

If any additional fees are deemed to be due at this time, the Assistant Commissioner is authorized to charge payment of the same to Deposit Account No. 50-0552.

Respectfully Submitted,  
DAVIDSON, DAVIDSON & KAPPEL, LLC



Dated: April 11, 2011

By: \_\_\_\_\_  
William C. Gehris. Reg. No. 38,156

DAVIDSON, DAVIDSON & KAPPEL, LLC  
485 Seventh Avenue, 14<sup>th</sup> Floor  
New York, New York 10018  
(212) 736 - 1940